

## THE HISTORY LEADING UP TO THE GOLD KING MINE BLOWOUT IS A TALE OF REGULATORY FAILURE

The background of the Gold King Mine blowout is a tale of absolute regulatory failure over a twenty year period. Both the EPA and the State of Colorado failed to hold Sunnyside Gold Corp. and its Canadian parent, Kinross Gold, accountable for the environmental damages caused by the bulkheading of the adjoining Sunnyside Gold Mine. The following information is directly taken from the lawsuit filed by the State of New Mexico against the EPA. Content that does not appear in the lawsuit is in [brackets].

“On August, 2015, the United States Environmental Protection Agency (“EPA”) and its contractor Environmental Restoration, LLC (“Environmental Restoration”) breached a collapsed portal of the Gold King Mine, releasing over three million gallons of acid mine drainage and 880,000 pounds of heavy metals into the Animas River watershed in southwestern Colorado.

“The immediate cause and culprits of the Gold King Mine are clear. However, the root cause of the hazardous condition that culminated in the disaster is more complex, dating back more than two decades.

“In 1996, Sunnyside Gold Corporation (“Sunnyside Gold”) the owner of the vast Sunnyside Mine network, persuaded the State of Colorado to let it install bulkheads in two drainage tunnels below the Sunnyside Mine. The bulkheads caused water from the Sunnyside Mine to enter the workings of other mines on Bonita Peak, like the Gold King and the Mogul. Suddenly, these mines, which had been virtually dry for decades, were discharging hundreds of gallons of acid mine drainage every minute. For more than a decade the volume of water and hydraulic pressure within these mines continued to build, while regulators and Sunnyside’s parent, Kinross Gold Corporation, dismissed the problem or publically denied its existence.

“When discharges from the Mogul Mine surged after the sealing of the American Tunnel, its owner, Mr. Todd Hennis, [invited the EPA to join him in a law suit against Sunnyside Gold. Although they declined], he sued Sunnyside Gold in 2002. Mr. Hennis ultimately dropped the lawsuit, and was included in a settlement through which he received title to most of the land at Gladstone.

“In 2005, Mr. Hennis acquired the Gold King Mine through a foreclosure action.

“Acid mine drainage from the Level 7 adit continued to grow after Mr. Hennis acquired the Gold King. By 2007, the discharges surged to between 150 and 200 gallons per minute, based on the season. In response, the DRMS prepared to re-direct the discharges away from the slope of the waste rock dump and re-route the water into Cement Creek.

“On August 28, 2007, Mr. Hennis met with DRMS officials and an EPA official named Steve Way. At the meeting, Mr. Hennis voiced his concerns about a potential blowout of the portal at Level 7. In fact, Mr. Hennis requested EPA’s help in entering the mine to investigate potential blockages of the portal that could cause a hazardous blowout.

“In public interviews, Mr. Hennis repeatedly stated that he presented water quality data to EPA, Colorado, Kinross, and Sunnyside Gold, which demonstrated that the water from the Sunnyside mine pool had flooded the Gold King Mine. On information and belief, representatives and employees of Kinross, Kinross Gold U.S.A., and Sunnyside Gold were told many times over many years to re-open the bulkheads in the American Tunnel, lower the mine pool to prevent further flooding of the Gold King Mine and neighboring mines, and restore the water table within Bonita Peak to the level that existed before plugging the American Tunnel.

“In 2008, DRMS started partial reclamation work at the Gold King Mine. Notably, in DRMS’s project summary DRMS admits that it closed the Level 7 adit in a way that allowed the potential for a blowout.

“EPA obtained access to the Gold King Mine in 2008 through an agreement with Mr. Hennis. When EPA sought to renew the agreement in late 2010, Mr. Hennis refused based on his stated concerns that EPA would create a “pollution disaster”. When EPA served Mr. Hennis with a compliance order and threatened fines upwards of \$35,000 per day, Mr. Hennis signed the renewed agreement. They renewed the access agreement several more times, including a renewal on August 8, 2014, which lasted through the end of 2015.

EPA Operations culminated in the massive blowout that contaminated the Animas River, the San Juan River, and Lake Powell with over three million gallons of acid mine drainage and sludge, and 880,000 pounds of metals.”

### **Public/Private partnership to drain the Sunnyside Mine rejected by EPA.**

Shortly after the Gold King blowout, a large private foundation proposed a public/private partnership to drain the Sunnyside Mine and to treat the water. The foundation was willing to contribute a sizeable amount of cash, and major mining companies such as Newmont Mining and Freeport Copper also wanted to participate in this effort. EPA refused to talk seriously to the foundation’s representatives.

## **WHY SHOULD ADMINISTRATOR PRUITT GET INVOLVED IN THIS SITUATION?**

### EPA Persistent Abusive Behavior, Including Violation of Mr. Hennis’ Basic Constitutional Rights

In 2010, the EPA sought to renew an agreement with Mr. Hennis to gain access to the Gold King Mine. Mr Hennis refused based on pollution created by EPA on property he owned in Leadville, Colorado, and his concern that the EPA would create another

“pollution disaster” at the Gold King. In response, EPA served Mr. Hennis with a compliance order that threatened fines upwards of \$35,000 per day.

In August 2015, after EPA contractors caused the Gold King Mine blowout, Mr. Hennis verbally authorized EPA to use the land he owns personally in Gladstone, Colorado on an emergency basis. This land is downstream of the Gold King Mine, and EPA wanted it for emergency water treatment. Mr. Hennis gave this verbal authorization recognizing that time was of the essence and with the stipulation that since EPA would later negotiate a settlement and lease agreement in good faith.

For the next 21 months, the EPA refused to engage in substantial settlement negotiations with Mr. Hennis. During this time they occupied and held control over Mr. Hennis’ land in Gladstone in violation of his basic constitutional rights, and did so under threat of civil penalties for the treatment of mine discharge caused by EPA.

In May 2017, Mr. Hennis received a draft Settlement Agreement from EPA, it essentially demanded title to Gladstone, CO and a waste disposal area at the Pride of the West Mill with absolutely no compensation and left Hennis exposed to lawsuits by the EPA and other PRPs. Hennis has always offered use of the properties on a low cost basis to the EPA, but EPA has insisted on punishing the one party who tried to prevent the environmental damage of the Sunnyside Mine Pool over a fifteen year period.

Mr. Hennis is probably the first property owner in the Bonita Peak Superfund site that EPA has discussed a “settlement” with. What is particularly troubling about the abusive treatment of Mr. Hennis is that it bodes ill for how the other landowners who also had no contribution to causing the problem will be treated in the future.

The metals in the Bonita Peak Superfund Area are too important to the United States to close off

The entirety of the Bonita Peak Superfund Area is well known for its many strategic minerals deposits and represents the United States’ best possibility for producing these minerals, e.g.

Tellurium: Based on a report by Bernard C. Koch published in 1990, the Gold King Mine is probably the largest deposit of tellurium in the United States. Tellurium is the world’s 5<sup>th</sup> rarest metal, and is used for solar panels and other high technology applications.

Tungsten: Gladstone, Colorado is at the heart of a large tungsten district, including the well-documented Yukon Tunnel Mine (Mines and Minerals of the Great American Rift-Colorado & New Mexico, page 131.) 85% of the tungsten used in the U.S. is supplied by China. EPA may permanently close the Yukon Tunnel (which has agricultural quality water flowing from it).

Other minerals important to national defense, high technology, and renewable energy that occur in the Area in significant quantities include: Indium, Molybdenum, Bismuth, Antimony, Manganese, Gold, and Silver (USGS Professional Papers 378-A and 535. USGS Bulletin 182). It is incredibly important to U.S. national defense that EPA does not close off the mines in the area permanently.

Processing these minerals requires access to a local staging area. As the only large, flat parcel of land for many miles, Gladstone, Colorado is the only feasible option for the Area mines. The nearby Pride of the West Mill at Howardsville is the only viable milling facility in southwest Colorado for emergency production of strategic metals, and EPA's actions threaten its viability.